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**To:** Microsoft ATR  
**Date:** 1/24/02 3:22pm  
**Subject:** Microsoft Settlement

I've been a programmer and publisher since the mid 1980s. Since 1995 I've worked in the internet industry for companies around the San Francisco Bay; writing web applications for companies such as Etrade, Sun, and numerous startups.

I have several comments about obvious flaws the proposed settlement, and a suggestion for a small, verifiable behavioral constraint on Microsoft that could reduce its ability to compete unfairly in the browser market.

Regarding the settlement....

The proposed settlement in this case appears on the face of it to be as preposterous as the proposed settlement in the civil case. There the proposed punishment for unfair competition was to give away Microsoft software, thereby gaining market share. Here, Microsoft can eliminate competitors with impunity by claiming it is for "security".

One significant bit of competition Microsoft faces is from open source software. Samba and Linux, for example, provide workable file and print sharing -- that would otherwise require purchasing Microsoft servers. Samba and Linux are cheaper and more reliable than Microsoft products. The proposed settlement requires Microsoft to share information, but specifically exempts them from sharing information with open source projects, and requires software developers to pay for "third-party verification". Open source projects use their large customer and developer bases for "verification".

We have a fair amount of experience with Microsoft's behavior with respect to legal settlements. With Gates as instigator, they have flouted and mocked every settlement. This settlement gives them a loophole that they don't have to share information related to security. Well, surprise! Now after years of ignoring security, and using lack of security to eliminate competitors, Gates says it's all about security. Who could look at Microsoft's record and believe they won't use the word "security" as a reason to avoid sharing information with potential competitors?

I trust that the judicial system's review of the settlement will reject the obviously wrong-headed elements of the settlement, and insist on some mechanism that publicly identifies and then stops Gates' attempts to defy the settlement. I presume this would mean rejecting the proposed settlement outright, and incorporating many of the points in a new settlement -- without the loopholes, and with oversight that holds MS publicly and legally accountable.

Regarding a new condition....

I have a suggestion for an easily verifiable condition: all web pages on all Microsoft websites should validate according to the w3c.org validators. MS has already tried to exclude non-Microsoft browsers from their websites. In the face of widespread publicity during the settlement phase, they made a pretense of allowing other browsers access to their sites. If all of Microsoft's websites must validate, MS can't gain an advantage over other browser makers by making MS websites inaccessible to other browsers. "Can't", of course, is too strong a word. If they were also required to follow standard accessibility guidelines, there would be less room to cheat.

Since Microsoft can test web pages before publishing them to a website, the fine for publishing invalid web pages could be very high. Since anyone with an internet connection can test the validity of any web page, there is little room for Microsoft to hide from this aspect of a settlement. Obviously, Microsoft's billion+ dollar per month net profit means they could afford to pay fines. Telco's -- with their regional monopolies -- seem to prefer paying fines over allowing competitors' access to necessary infrastructure. Small, set fines with no other enforcement mechanism aren't likely to change MS's behavior.

Requiring valid html pages on Microsoft websites is a relatively small step toward insisting on fair competition in the browser market, but it would be useful, and easy to verify.